IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 662 OF 2005
WITH
CIVIL APPLICATION NO. 1665 OF 2006

1. Mrs. Nalini Shankar Bankar
and ors. ..Appellants

Vs.

1. Shri Vitthal Bansi Bankar
and anr. ..Respondents

Mr. Jaydeep Deo for appellants.
Mr. P.S. Dani for respondent no. 2.

CORAM: B.H. MARLAPALLE, J.

Date : April 10, 2007.

P.C.:

1. Heard Mr. Deo the learned counsel for the appellants-plaintiffs who had filed R.C.S. No.1564 of 1997 for accounts of joint Hindu family business in the name and style of "General Repairing Works" at Pune. The suit came to be dismissed and, therefore, the plaintiffs filed Civil Appeal No. 215 of 2004 which was dismissed by the learned 2nd Joint Ad-hoc Additional District Judge at Pune on 13/12/2004 and hence this second appeal.

2. Admittedly, Shri Bansi Jogoji Bankar was

running the business called "General Repairing Works" and Bansi had three sons, namely, Vitthal, Shankar and Waman. The plaintiffs are the LRs of Shankar and Vitthal and Waman were impleaded as defendant nos.1 and 2 respectively. It was contended by the plaintiffs that on the demise of Bansi on 16/9/1979 all the three brothers continued with the business of auto repairs in the name and style of "General Repairing Works" and Shankar died on 9/10/1994. However, thereafter the defendant nos.1 and 2 were paying Rs.2000/- per month to the plaintiffs and last such payment was in July 1995. Subsequently the plaintiffs kept on asking the defendants to give account of their share in the joint family business and had also issued to that effect the notice dated 17/9/1997 (Exh.25). Finally, they filed the suit on 24/10/1997. The defendants filed their Written Statement at Exh.18 and also brought on record a copy of the Partnership Deed at Exh.46. It was pointed out that the business was not that of Hindu Joint Family but it was a partnership business and, therefore, the provisions of Section 43(c) of the Indian Partnership Act would apply. The partnership was liable to be

dissolved on the demise of any of the partners and subject to the contract between the parties. It was also pointed out that the plaintiffs had filed Special Civil Suit No. 132 of 2001 for partition and separate possession of the property and the same was decided on 27/4/2004. In the said suit the contentions that there was a business between the three brothers as a joint Hindu family was also rejected. On behalf of the plaintiffs Ganesh Shankar had stepped in the witness box as PW 1, whereas on behalf of the defendants Vitthal was examined as D.W.1.

3. The recitals of the Partnership Deed at Exh.46 indicate that the earlier partnership had come to an end on Bansi's demise on 16/9/1979 and thereafter a new partnership was formed with the three brothers as the partners i.e. Vitthal, Shankar and Waman. However, Shankar died on 9/10/1994 and, therefore, the partnership was dissolved. P.W.1 Ganesh Shankar admitted in his cross-examination that initially his grandfather has started the business in partnership with one Ramchandra Sadashiv Gogate in 1938 and he retired from the partnership on 1/10/1965 and in place

of Ramchandra Sadashiv Gogate, Bansi had taken three of his sons as a new partners. However, this version he immediately changed in the cross-examination and stated that since 1/10/1965 partnership of his grandfather, father and uncles started in the said business and the said partnership dissolved on 26/4/1975. He admitted that in the partnership firm the grandfather had 10% share and each of the sons was having 30% share in the partnership. He further admitted that on the demise of his grandfather on 16/9/1979 the partnership continued amongst three sons of Bansi till the year 1992 and the old partnership was dissolved in the year 1992 and a new partnership was created with three brothers at Exh.48. This new partnership also got dissolved on 9/10/1994 on account of the demise of the Shankar. It was thus proved by the defendants that there was no joint Hindu family business in the name of General Repairing Works but it was a partnership firm between Shankar and two of his brothers and the same got dissolved on the demise of Shankar. Both the courts below, therefore, concurrently held that the relief asked in the suit i.e. for accounts of joint Hindu family business

could not be entertained and on the contrary it was a partnership business.

4. The Lower Appellate Court further observed that the suit was beyond limitations. There is no dispute that Shankar died on 9/10/1994 and the partnership stood dissolved. The suit was filed on 26/10/1997 i.e. beyond a period of three years and by referring to the provisions of Section 43(c) of the Indian Partnership Act and Article 5 of the Limitations Act, it was held that the suit was filed beyond limitation.

5. Thus, the concurrent findings recorded by both the courts below that between the three brothers there was a partnership business and it stood dissolved on 9/10/1994 on the demise of Shankar are the findings of facts and, therefore, no substantial question of law arises for considerations in this second appeal.

6. The appeal is hereby dismissed.

7. Civil Application No.1665 of 2003 does not

survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)